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August 4, 2005

Commission Chair Liane M. Randolph  
Commissioner Philip Blair  
Commissioner Sheridan Downey, III  
Commissioner A. Eugene Huguenin  
Commissioner Ray Remy  
Fair Political Practices Commission  
428 J Street, #450  
Sacramento, CA 95814

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FAIR POLITICAL  
PRACTICES COMMISSION  
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RE: Resolution of the Commission Regarding Enforcement of the Political Reform Act

Dear Commissioners:

I write with what I hope are productive comments for the reconsideration of a resolution arising from *Norm Ryan v. AB&I Foundry, et al.* (the "Norm Ryan lawsuit") and discussed at the most recent meeting of the Commission. Let me emphasize that although our firm has become involved in litigation on behalf of currently named parties in the *Norm Ryan* lawsuit, these comments are not made on their behalf; rather, these comments are made on behalf of the vast majority of companies, individuals and unions who fully complied with the Political Reform Act and were incorrectly named in the suit.

By our estimate, at least two-thirds of those initially named should not have been, either because they had filed the necessary major donor reports or had previously been penalized by the Commission. We believe it is a reasonable estimate, given the number of improperly-named defendants, that hundreds of thousands of dollars were needlessly spent to address unjustified allegations that could have been saved with appropriate research by plaintiff. The Commission should comment on this misuse of the private attorney general power under Government section 91007 for several reasons.

First, like the Commission we recognize the need for private enforcement in appropriate cases. Nevertheless, proclamations about serving the public interest do not absolve plaintiffs of the obligation to proceed with appropriate diligence in filing a lawsuit.

The plaintiff apparently failed to review paper major donor filings in Sacramento or with the Los Angeles County Registrar before filing the suit. It is not the case, as plaintiff still continues to insist, that the fault lies with the Secretary of State because the Secretary is "behind" in putting filings online. Rather, pursuant to the Political Reform Act only major donor filings over \$50,000 per calendar year are required to be filed electronically, and consequently disclosed online. (Government Code sections 84602, 84604 & 84605.) Plaintiff could have easily discovered this fact if he had consulted the Political Reform Act or if, while spending time on the Secretary's website compiling his allegations, he had clicked the link entitled "FAQ" under "Electronic Filing Info" to read the following:

- Q: What is the dollar amount or threshold that would trigger the duty of electronically file campaign statements:
- A: If a filer has raised or spent a cumulative amount of \$50,000 or more, the filer is required to file electronically. This figure includes monetary and non-monetary contributions as well as loans received when calculating contributions received, and loans made, accrued expenses, and all cash payments as well as contributions or independent expenditures made when calculating expenditures.

Furthermore, it is no excuse to claim that obtaining the paper filings from the Political Reform Division of the Secretary of State was "hard" or "confusing." The filings are readily available to the public on the terms prescribed by the Political Reform Act, and given the magnitude of the plaintiff's lawsuit, he had an obligation to be properly investigate warnings that his allegations were unjustified.

Second, the Commission's Chief of Enforcement expressly put plaintiff on notice of past enforcement concerning named parties by a letter dated December 29, 2004. Consequently, under Government Code section 91008.5, a civil suit against those defendants for the same violations was precluded. Certainly given that information, follow-up investigation was the very least that should reasonably have been expected of the plaintiff. All information concerning past enforcements can be found online under FPPC agendas. Instead, plaintiff ignored the Commission's warning and proceeded full steam ahead.

Finally, given the Commission has long penalized unintentional failures to timely file major donor reports, the Commission should not remain silent when fully compliant major donors have been sued under the Political Reform Act.

We recognize that in some respects this situation is now out of the Commission's hands. The presiding court judge will determine the issue of liability and, where appropriate, the proper penalty for all remaining defendants. We appreciate the Commission's efforts to inform the court of its procedures and penalty schedule. We also recognize that this episode may prompt procedural reforms to ensure notice and due process to those named in future lawsuits. However, as the draft resolution recognizes, the Commission still has a role in ensuring the impartial and effective enforcement of the Political Reform Act and should make a strong statement concerning those improperly named in the *Norm Ryan* suit.

The Commission should hold attorney general litigants under Government Code section 91007 to the same standards that it would expect of any attorney practicing before its enforcement division by calling on these and future plaintiffs to do their homework before burdening Commission staff, the courts, and law abiding participants in the political process.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Kaune', with a stylized flourish at the end.

Jason D. Kaune

JDK/djf